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October 17, 2005

**DECISION AND ORDER  
OFFICE OF HEARINGS AND APPEALS**

**Hearing Officer's Decision**

Case Name: Personnel Security Hearing

Date of Filing: April 21, 2005

Case Number: TSO-0232

This Decision concerns the eligibility of XXXXXXXX XXXX XXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material."<sup>1/</sup> A Department of Energy (DOE) Operations Office suspended the individual's access authorization under the provisions of Part 710. This Decision considers whether, on the basis of the evidence and testimony presented in this proceeding, the individual's access authorization should be restored. As set forth in this Decision, I have determined that the individual's security clearance should not be restored at this time.

**I. Background**

The provisions of 10 C.F.R. Part 710 govern the eligibility of individuals who are employed by or are applicants for employment with DOE, contractors, agents, DOE access permittees, and other persons designated by the Secretary of Energy for access to classified matter or special nuclear material. Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

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<sup>1/</sup> An access authorization is an administrative determination that an individual is eligible for access to classified matter or special nuclear material. 10 C.F.R. § 710.5. Such authorization will be referred to variously in this Decision as an access authorization or security clearance.

In this instance, the individual had been granted a security clearance from DOE after gaining employment with a DOE contractor. However, in late 2004, the local DOE security office (DOE Security) initiated formal administrative review proceedings by informing the individual that his access authorization was being suspended pending the resolution of certain derogatory information that created substantial doubt regarding his continued eligibility. This derogatory information is described in a Notification Letter issued to the individual on February 17, 2005, and falls within the purview of potentially disqualifying criteria set forth in the security regulations at 10 C.F.R. § 710.8, subsections h, j and l. More specifically, the Notification Letter alleges that the individual has: 1) “[a]n illness or mental condition which, in the opinion of a psychiatrist or licensed clinical psychologist, causes or may cause, a significant defect in judgment or reliability,” 2) “[b]een, or is, a user of alcohol habitually to excess, or has been diagnosed by a psychiatrist or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse,” and 3) “[e]ngaged in unusual conduct or is subject to circumstances which tend to show that the individual is not honest, reliable, or trustworthy; or which furnishes reason to believe that the individual may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interests of national security.” 10 C.F.R. §§ 710.8(h), (j) and (l) (Criterion H, Criterion J and Criterion L, respectively). The bases for these findings are summarized below.

With regard to Criteria H and J, the Notification Letter states that the individual was evaluated by a DOE consultant-psychiatrist (DOE Psychiatrist) who diagnosed the individual with Alcohol Dependence. According to the DOE Psychiatrist’s report, this is a mental condition that causes or may cause a significant defect in the individual’s judgment or reliability. The DOE Psychiatrist further determined that the individual did not present adequate evidence of rehabilitation or reformation. Under Criterion L, the Notification Letter states that on two separate occasions, in July 2003 and in March 2004, the individual tested positive on a breath alcohol test administered by his employer upon reporting to work.

In a letter received by the DOE Office of Hearings and Appeals (OHA) on April 21, 2005, the individual exercised his right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). On April 26, 2005, I was appointed as Hearing Officer in this case. After conferring with the individual and the appointed DOE Counsel, 10 C.F.R. § 710.24, a hearing date was established. At the hearing, the DOE Counsel called the DOE Psychiatrist as the sole witness on behalf of DOE Security. Apart from testifying on his own behalf, the individual called his wife, his brother-in-law, two close friends and a co-worker. The transcript taken at the hearing will be hereinafter cited as "Tr.". Various documents that were submitted by the DOE Counsel during this proceeding constitute exhibits to the hearing transcript and will be cited as "DOE Exh."

By his attorney, the individual elected to file his hearing closing statement in the form of a post-hearing brief (Post-Hearing Brief).

### Summary of Findings

The following factual summary is essentially uncontroverted. However, I will indicate instances in which there are disparate viewpoints regarding the information presented in the record.

The individual was granted a security clearance in 1997 as a condition of his employment with a DOE contractor. The individual maintained his security clearance without incident until July 2003, when the individual was called by his employer to work voluntary overtime duty. Due to the nature of the individual's job, employees who volunteer for overtime duty are required under the established procedure to abstain from consumption of alcohol for an eight-hour period prior to reporting for duty, and to pass a .02 breath alcohol test (BAT) upon arrival. When the individual was called on the evening of July 15, 2003, he accepted the voluntary overtime duty although he had been drinking the night before. On the morning of July 16, 2003, when he reported for work, he registered a failing BAT of .042. The individual was given a confirmation test a few minutes later and again blew a failing BAT of .038.

Because of this incident, the individual was referred to his plant psychologist who made a mandatory referral of the individual to his Employee Program Assistance (EAP) counselor. The EAP counselor performed psychological testing of the individual and required the individual to submit to a laboratory blood test. According to the EAP counselor, the psychological testing indicated a long-term pattern of alcohol abuse by the individual, and the individual's blood work showed that he had abnormally high GGT liver enzyme levels which is often indicative of alcohol abuse. The EAP counselor referred the individual to a five-week intensive outpatient alcohol treatment program (IOP). Under the conditions of the IOP, the individual remained abstinent from alcohol during the program which the individual successfully completed on September 4, 2003.

On August 26, 2003, the individual was called in by DOE Security for a Personnel Security Interview (PSI #1) regarding the July 16, 2003 incident in which he failed the required .02 BAT. The individual explained during the PSI that he had six to eight beers during the day and evening of July 15, 2003, and had his last beer at approximately 9:30 p.m. The individual stated that he felt ready for duty the next morning and was surprised when he failed the BAT.

Pursuant to PSI #1, the individual was referred to the DOE Psychiatrist who examined the individual's security file and performed a psychiatric evaluation of the individual on February 20, 2004. The individual admitted that he had resumed drinking after completing his IOP and had drunk on three or four occasions, consuming about five

beers in each instance. The individual stated, however, that he had resumed abstinence in November 2003. The individual further expressed his desire to maintain his abstinence due to medical reasons. In this regard, the DOE Psychiatrist noted in her report that the individual had a heart ailment in late 2001 which required surgery and that the individual remain on medication. In her report issued on February 23, 2004 (Report #1), the DOE Psychiatrist determined that the July 2003 incident in which the individual failed the .02 BAT was a one-time occurrence. The DOE Psychiatrist concluded in Report #1 that the individual did not suffer from alcohol dependence or alcohol abuse at the time of her evaluation, although she indicated that the individual may have been a user of alcohol habitually to excess within three to four months prior to her evaluation. Based upon the findings of the DOE Psychiatrist, DOE Security determined that the security concerns stemming from the July 2003 incident had been resolved, and no further action regarding the individual's security clearance was necessary.

However, approximately one month later, on March 27, 2004, the individual had a recurrence of the July 2003 incident and again failed to pass the .02 BAT after reporting for a voluntary overtime assignment. The individual again met with the plant psychologist following this second incident. The individual decided to completely abstain from alcohol at this time, but elected not to seek additional alcohol treatment through his EAP counselor. The individual maintained his abstinence for a few months but then resumed drinking, limiting himself to two beers once or twice a week.

On July 1, 2004, the individual was summoned by DOE Security for a Personnel Security Interview (PSI #2) regarding the March 2004 incident. During PSI #2, the individual explained that on March 26, 2004, he began consuming beer at approximately 7:00-8:00 p.m. while at a family gathering at the house of his mother who lives a few blocks from the individual. The individual admitted that he consumed 15-20 beers before leaving his mother's house in an intoxicated state at approximately 2:00-3:00 a.m., and going home to sleep. The individual was called by his employer the next morning, at approximately 11:00 a.m., and asked to report for a voluntary overtime assignment starting at 6:00 p.m. that evening. The individual accepted the overtime assignment believing he would be ready for duty at that time. However, the individual registered .027 on the required BAT upon reporting for duty. The individual was retested and again failed to meet the .02 standard.

During PSI #2, it was further revealed that during PSI #1 the individual did not accurately state the amount of beer he consumed prior to his first positive BAT reading in July 2003. The individual stated during PSI #1 that he consumed six to eight beers between 6:00 and 10:00 p.m. on the evening before the positive BAT reading, and similarly told the DOE Psychiatrist during the February 2004 psychiatric interview that he had consumed eight beers. During PSI #2, however, the individual stated that he may have consumed as many as 20 beers at that time.

Subsequent to PSI #2, the individual was again referred to the DOE Psychiatrist who conducted a second psychiatric examination of the individual on October 5, 2004. Pursuant to this evaluation, the DOE Psychiatrist issued a second report (Report #2) on October 10, 2004, in which she diagnosed the individual with Substance Dependence, Alcohol, based upon criteria set forth in *The Diagnostic and Statistical Manual of the American Psychiatric Association, IVth Edition TR (DSM-IV TR)*. In reaching her diagnosis, the DOE Psychiatrist relied substantially on the individual's elevated GGT liver enzyme readings. The DOE Psychiatrist also found it significant that the individual would have a second episode where he admittedly drank substantially to excess approximately one month after her initial examination of the individual in February 2004, when the individual told her that he had decided to stop drinking due to medical reasons. In her report, the DOE Psychiatrist further makes a residual diagnosis of Alcohol Abuse in the event it could be argued that the *DSM-IV TR* criteria for Alcohol Dependence had not been met.

According to the DOE Psychiatrist, the individual's alcohol dependence is an illness which causes or may cause a significant defect in the individual's judgment or reliability, until such time as the individual is able to demonstrate adequate evidence of rehabilitation or reformation. In this regard, the DOE Psychiatrist recommended either of the following as evidence of rehabilitation: 1) documented evidence of attendance at AA for a minimum of 100 hours with a sponsor, at least twice a week, for a minimum of one year, and an additional year of complete abstinence following completion of this program, or 2) satisfactory completion of a minimum of 50 hours of a professionally led substance abuse treatment program, for a minimum of six months, including "aftercare" and complete abstinence for 1½ years following completion of this program. As adequate evidence of reformation, the DOE Psychiatrist recommended two years of abstinence if the individual completes either of the two rehabilitation programs, or three years of abstinence if he does not.

## II. Analysis

A DOE administrative review proceeding under 10 C.F.R. Part 710 is not a criminal matter, in which the burden is on the government to prove the defendant guilty beyond a reasonable doubt. *See Personnel Security Hearing*, Case No. VSO-0078, 25 DOE ¶ 82,802 (1996). In this type of case, we are dealing with a different standard designed to protect national security interests. A hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). Once DOE Security has made a showing of derogatory information raising security concerns, the burden is on the individual to come forward at the hearing with evidence to convince the DOE that granting or restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). This standard implies that there is a strong presumption against the granting or restoring of a

security clearance. *See Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should not be restored since I am unable to conclude that such approval would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(d). The specific findings that I make in support of this determination are discussed below.

#### A. Criteria H & J; Mental Condition, Use of Alcohol

##### (1) Derogatory Information

The DOE Psychiatrist has diagnosed the individual with Alcohol Dependence based upon her two psychiatric examinations of the individual and her review of the individual's medical reports, and counseling and treatment records. In other DOE security clearance proceedings, Hearing Officers have consistently found that a diagnosis related to excessive alcohol use raises important security concerns. *See, e.g., Personnel Security Hearing*, Case No. VSO-0079, 25 DOE ¶ 82,803 (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0042, 25 DOE ¶ 82,771 (1995) (affirmed by OSA, 1996); *Personnel Security Hearing*, Case No. VSO-0014, *aff'd*, *Personnel Security Review*, 25 DOE ¶ 83,002 (1995) (affirmed by OSA, 1995). As observed in these cases, an individual's excessive use of alcohol might impair his judgment and reliability, and his ability to control impulses. These factors amplify the risk that the individual will fail to safeguard classified matter or special nuclear material. *Id.*

As discussed below, the individual challenges the DOE Psychiatrist's diagnosis of Alcohol Dependence, as well as her residual diagnosis of Alcohol Abuse. Nonetheless, I find that ample evidence exists in the record to support the determination of DOE

Security to invoke Criteria H and J in this case. There have been two incidents within a one-year period, in July 2003 and March 2004, when the individual failed to pass the .02 BAT required by his employer, following evenings when he admittedly drank substantially to excess. The second incident occurred within seven months of the individual completing a five-week alcohol treatment program, and approximately four weeks after the individual's first psychiatric interview with the DOE Psychiatrist. The individual assured her at that time that there would be no further incidents of excessive drinking. Accordingly, I will turn to whether the individual has presented sufficient evidence to mitigate the concerns of DOE Security with regard to his use of alcohol.

## (2) Mitigating Evidence

The individual admits that he had too much to drink on the evenings of July 15, 2003, and March 26, 2004, prior to failing the mandatory .02 BAT the following day in both instances. Tr. at 168. Regarding the first incident, the individual explained that "I was shocked because I just didn't think that I'd drank as much as I had, it must have just got away from me." Tr. at 175. On the evening preceding the second occurrence, the individual asserts that he "wasn't paying attention" to how much he was drinking. Tr. at 186. The individual claims, however, that he does not have a drinking problem. Tr. at 205. The individual maintains that both occurrences were isolated incidents, pointing out that he has volunteered for overtime duty and passed the mandatory .02 BAT "hundreds of times" over the past several years. Tr. at 174, 187. The individual further points out that he has never had any legal difficulties, e.g. a DUI arrest, associated with his use of alcohol. Tr. at 188. The individual contends that he does not have a problem with alcohol, but rather "alcohol has a problem with me. . . . [I]t doesn't leave my system like it used to or like it should, and so I just can't do much of it." Tr. at 197.<sup>2/</sup>

The individual maintains that he is not an abuser of alcohol and disagrees with the DOE Psychiatrist's diagnosis of Alcohol Dependence. Tr. at 196, 199. The individual contends that the findings and assumptions underlying the DOE Psychiatrist's diagnosis are incorrect. In her report, the DOE Psychiatrist determined that, during the one-year period which included the two incidents, the individual met the following three criteria of seven criteria specified in the *DSM-IV TR* to support her diagnosis of Alcohol Dependence<sup>3/</sup>:

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<sup>2/</sup> The individual testified that after the first incident in July 2003, he was informed by both a physician and a nurse who performed his medical examination that it was possible that his body was not processing alcohol the way it used to. Tr. at 201-02.

<sup>3/</sup> The *DSM-IV TR* provides that a diagnosis of Substance Dependence is justified where three  
(continued...)

- (1) tolerance, as defined by either of the following:
  - (a) a need for markedly increased amounts of the substance to achieve intoxication or desired effect.
  - (b) markedly diminished effect with continued use of the same amount of substance. . . .
- (3) the substance is often taken in larger amounts or over a longer period than was intended. . . .
- (7) the substance use is continued despite knowledge of having a persistent or recurrent physical or psychological problem that is likely to have been caused or exacerbated by the substance . . .

See DOE Exh. 14 (Report #2) at 8-10 (Criterion (1), Criterion (3) and Criterion (7), respectively). According to the DOE Psychiatrist, the individual met Criterion (1) because information provided during her interview indicated that the individual became intoxicated after three to four beers while in high school, but now requires an average of six to seven beers to feel the same effects. *Id.* at 8. The individual asserts, however, that the DOE Psychiatrist did not take into account that he has gained nearly fifty pounds (predominantly in muscle mass) since high school. Tr. at 233; Post Hearing Brief at 3.

With regard to Criterion (3), the DOE Psychiatrist opines in her report that the individual has minimized his reported use of alcohol based upon her analysis of the individual's GGT liver enzyme test results. DOE Exh. 14 at 9. In Report #2, the DOE Psychiatrist provides the following chart of the individual GGT test results:

<u>Date</u>	<u>GGT (0-65 normal)</u>
8-5-03	52
9-19-03	111
10-9-03	151
11-3-03	88
12-16-03	66
1-26-04	85
3-29-04	92
4-7-04	64
4-23-04	32
6-4-04	23

DOE Exh. 14 at 7. In her report and during her testimony, the DOE Psychiatrist observed that the individual's GGT levels were normal during those times when the

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3/      (...continued)  
or more of the seven specified criteria are manifested within the same twelve-month period.  
See DOE Exh. 14 (Report #2) at 8.



individual was reportedly abstinent or had substantially reduced his drinking, e.g. in August 2003 when the individual was enrolled in the IOP and after failing the .02 BAT in March 2004. The DOE Psychiatrist remains convinced, however, that these GGT readings show that the individual drank excessively during the period following his completion of the IOP in early September 2003 until the incident in March 2004. *Id.* at 9; Tr. at 222-24.

The individual argues that the DOE Psychiatrist has misplaced her reliance on the GGT liver enzyme data. The individual argues that the elevated GGT readings may have been caused by the heart medication,<sup>4/</sup> Androjel and Lipitor, he was taking at the time. Tr. at 181-82. The individual testified that he reported the elevated GGT levels to his personal physician in the fall of 2003, and gave the physician a copy of his laboratory test results. Tr. at 180. The individual's physician responded with a letter dated February 10, 2004 stating as follows: "[The individual] has been under my care since January 2002. He is currently taking Androjel (nasal), which could have caused elevation of the GGT. His cholesterol medication has been changed from Lipitor, as this could also elevate his GGT." DOE Exh. 17. The individual argues that his GGT level returned to normal after March 2004 as a result of his physician discontinuing Lipitor in February 2004. Post-Hearing Brief at 3. The individual further suggests that the GGT readings performed by his employer's laboratory may have been skewed because the individual was not required to fast prior to taking his blood sample. Tr. at 242-43; Post-Hearing Brief at 3.

Finally, the DOE Psychiatrist determined that Criterion (7) was met in Report #2 based upon statements made by the individual during her first examination that he had decided not to drink since it was unwise to mix alcohol with his heart medications. *See* DOE Exh. 15 at 6. In Report #2, the DOE Psychiatrist states that despite the "medical reasons (heart problems, several medications, elevated liver function tests) . . . he continued to use alcohol inappropriately against medical recommendations and against his better judgment." DOE Exh. 14 at 10. In this regard, the individual acknowledged that after the first incident in July 2003, he was told by the plant psychologist that he should not drink. Tr. at 200. The individual testified, however, that he discussed the use of alcohol with his personal physician and "my doctor says that he didn't see any problem with my drinking." Tr. at 201. According to the individual, he made the decision to continue drinking based upon the advice given to him by his personal physician. Tr. at 183.

Thus, the individual argues that the bases for the DOE Psychiatrist's diagnosis of Alcohol Dependence are not valid. The individual further contests the DOE Psychiatrist's residual diagnosis of Alcohol Abuse. In Report #2, the DOE Psychiatrist

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<sup>4/</sup> The record indicates that in late 2001, the individual had surgery to place two stints in his heart to alleviate a blockage. *See* DOE Exh. 15 (Report #1) at 4.

states that even if the criteria for Alcohol Dependence had not been met, the individual would properly be diagnosed with Alcohol Abuse under *DSM-IV TR* criteria<sup>5/</sup> since within a twelve-month period the individual manifested “recurrent substance use resulting in a failure to fulfill major role obligations at work, school or home.” DOE Exh. 14 at 10. The DOE Psychiatrist asserts that the two incidents in which the individual was sent home from work after failing to pass the .02 BAT satisfy this criterion. DOE Exh. 14 at 10; Tr. at 250.

The individual contests the DOE Psychiatrist’s residual diagnosis on two bases. First, the individual argues that he did not fail to fulfill a work “obligation” since in both instances the overtime assignment was voluntary duty which he could have refused. Tr. at 176; Post-Hearing Brief at 4. Secondly, the individual points out that while the .02 BAT is the standard imposed by his employer in order to be considered fit for duty, this level does not constitute legal intoxication (e.g. for purposes of driving an automobile) and would not have prevented the individual from working in a conventional form of employment. Tr. at 250-51; Post-Hearing Brief at 4.

Finally, the individual testified that although he continues to drink, he limits himself to one or two beers on occasion. Tr. at 189-90, 210. The individual’s wife corroborated the individual’s testimony that he drinks no more than two beers, once or twice a week. Tr. at 31-32. The individual’s close friends testified that they never saw the individual as having a drinking problem and since March 2004, the individual drinks very little. Tr. at 31-32, 58, 66, 87, 109-11. According to the individual’s friends, family and co-workers, he is reliable and trustworthy, and has a solid reputation for honesty and good judgment. *See* Tr. at 57, 95, 146-47.

### (3) Hearing Officer Determination

I have thoroughly considered the record of this case, and while the individual has presented considerable mitigating evidence and testimony, I have determined that he has yet failed to overcome the concerns of DOE Security. Section 710.7(a) provides that “[a]ny doubt as to an individual’s access authorization eligibility shall be resolved in the favor of the national security.” For the reasons below, I find doubt remains regarding the individual’s use of alcohol.

Despite the individual’s attacks upon her diagnosis, the DOE Psychiatrist firmly adhered to her opinion at the hearing that the individual satisfies the *DSM-IV TR*

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<sup>5/</sup> The *DSM-IV TR* provides that a diagnosis of Alcohol Abuse is supported when the individual manifests one of four behaviors within a twelve-month period, including generally: 1) recurrent failure to fulfill major role obligations at work, school or home, 2) recurrent use in situations in which it is physically hazardous, 3) recurrent substance-related legal problems, and 4) continued use despite social or interpersonal problems. *See* DOE Exh. 14 at 10-11.

criteria for Alcohol Dependence. Tr. at 223. The DOE Psychiatrist admitted that she did not consider the individual's increased body weight in determining that the individual had an increased tolerance for alcohol (Criterion (1)). Tr. at 233. Nonetheless, the DOE Psychiatrist opined that the individual's increased tolerance is amply demonstrated by the individual's ability to consume 15-20 beers on the evening preceding the July 2003 and March 2004 incidents. *Id.* Regarding Criterion (2), the DOE Psychiatrist acknowledged that the heart medication (Lipitor) the individual was taking was a contributing factor in the individual's elevated GGT readings. Tr. at 244-45. However, she stood by her assessment that the individual's substantially elevated GGT levels were principally caused by the individual's excessive drinking. Tr. at 224-25, 227-28, 255-56. Contributing to her judgment in this regard, the DOE Psychiatrist observed that the individual has not been truthful regarding his level of alcohol use.<sup>6/</sup> Tr. at 217-18. The DOE Psychiatrist noted, for example, that at the hearing the individual gave a different account of his drinking on the evening preceding the second incident in March 2004. *Id.*<sup>7/</sup> The DOE Psychiatrist also noted the testimony of the individual's family members regarding the individual's drinking appeared to contradict the information provided by the individual himself. Tr. at 217.<sup>8/</sup>

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<sup>6/</sup> In Report #2, she states: "[The individual] also possesses some personality traits that are commonly observed in those with substance dependence. For example, he seemed to have a good capability to provide 'lip service' and 'con' others. . . Now that he has been caught red-handed, [the individual] started fabricating different versions of the same incident." DOE Exh. 14 at 11. The DOE Psychiatrist similarly questioned the individual's veracity at the hearing. *See* Tr. at 217-18.

<sup>7/</sup> During PSI #2 and during the second psychiatric interview, the individual affirmed that he drank 15-20 beers at his mother's house while at the March 26, 2004 family gathering, from approximately 7:00 or 8:00 p.m. until he left at approximately 2:00 to 3:00 a.m. *See* DOE Exh. 31 at 11-13. At the hearing, however, the individual testified that starting at noon until he finally went home, "during that whole time period, yes, I may have drank 15." Tr. at 204. I note that the record further indicates that the individual gave false information during PSI #1 when he stated that he drank only six to eight beers during the day preceding the first incident in July 2003. *See* DOE Exh. 32 at 9. During PSI #2, the individual admitted that he may have drank as many as 20 beers on that occasion. *See* DOE Exh. 31 at 37.

<sup>8/</sup> For instance, the individual admitted to the DOE Psychiatrist that on the evening preceding the second failed BAT, "at the time he left his mother's house he was intoxicated (slurred speech and loss of balance)" and "he was told that someone told his wife that she better take him home." DOE Exh. 14 at 4, 5. In describing the same incident during PSI #2, the individual stated that the next day after failing the .02 BAT and being sent home, he discussed the matter with his wife and brothers-and-law who said "well you did get pretty ripped last night." DOE Exh. 31 at 52. When questioned about the individual's drinking that night at the hearing, however, the individual's wife testified that the individual "did not appear to be intoxicated" that evening, and the individual's brother-in-law (who played  
(continued...)

Finally, the DOE Psychiatrist was adamant that Criterion (7) is met in this case despite the individual's testimony that his physician said it was alright for him to drink. The DOE Psychiatrist points out that according to her information, the individual's physician advised no more than two alcoholic beverages a day, and certainly not the level of drinking admitted to by the individual. *See* DOE Exh. 14 at 9; Tr. at 248. The DOE Psychiatrist deemed more significant, however, that the individual continued to drink, even to the point of intoxication in March 2004, despite his statements during their interview in February 2004 that he had decided upon abstinence for medical reasons. DOE Exh. 14 at 10; Tr. at 249.

The DOE Psychiatrist also affirmed her opinion that a diagnosis of Alcohol Abuse would be appropriate if the criteria for Alcohol Dependence had not been met, based upon her judgment that the individual had twice within a one-year period failed to fulfill a major work obligation due to excessive consumption of alcohol. Tr. at 250. The DOE Psychiatrist conceded that .02 is not legal intoxication, and that the two incidents stemmed from requests to work voluntary overtime that the individual did not know he would receive and could have refused. Tr. at 250, 253. The DOE Psychiatrist emphasized, however, that "[the individual] was sent home from work as a result of alcohol use . . . Although it was not a scheduled thing, no one could know, but he had one prior incident that he could have learned a lesson from. He is in a job that everyone said there is always a possibility that you could be called." Tr. at 251, 253.

In cases of this nature, Hearing Officers accord great deference to the expert opinions of psychiatrists and other mental health professionals. *See Personnel Security Hearing*, Case No. TSO-0233, 28 DOE ¶ \_\_\_\_ (August 31, 2005); *Personnel Security Hearing*, Case No. VSO-0146, 26 DOE ¶ 82,788 (1997) (*aff'd*, by OSA 1997); *Personnel Security Hearing*, Case No. VSO-0027, 25 DOE ¶ 82,764 (1995); *Personnel Security Hearing*, Case No. VSO-0015, 25 DOE ¶ 82,760 (1995). In this case, the individual did not present expert testimony to counteract the opinion of the DOE Psychiatrist. Moreover, I find ample support in the record for the DOE Psychiatrist's findings. Following the first incident of the failed .02 BAT, the individual was evaluated by his EAP counselor who administered psychological tests<sup>9/</sup> and found them indicative of "a

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<sup>8/</sup> (...continued)

cards with the individual until late that evening) testified that the last time he saw the individual intoxicated was ten years ago at a Christmas party. *See* Tr. at 48, 88.

<sup>9/</sup> The EAP counselor's July 28, 2003 letter to the plant psychologist states that her assessment of the individual included "a structured clinical interview, Client Questionnaire, Basis-32, Personality Assessment Inventory (PAI) and Substance Abuse Subtle Screening Inventory (SASSI)." DOE Exh. 22.

well-established, long-term pattern of alcohol abuse.” DOE Exh. 22. The plant psychologist expressed this concern after the individual chose not to seek additional treatment following the incident in March 2004: “[The individual] was not going back to treatment. I did not recommend it. I told him it was his choice. I see this guy as a real risk; the potential for relapse is really high. He did not think he had a problem.” DOE Exh. 14 at 7.

In her report, the DOE Psychiatrist recommended either of the following as evidence of rehabilitation from the individual’s Alcohol Dependence: 1) documented evidence of attendance at AA for a minimum of 100 hours with a sponsor, at least twice a week, for a minimum of one year, and an additional year of complete abstinence following completion of this program, or 2) satisfactory completion of a minimum of 50 hours of a professionally led substance abuse treatment program, for a minimum of six months, including “aftercare” and complete abstinence for 1½ years following completion of this program. DOE Exh. 14 at 12. As adequate evidence of reformation, the DOE Psychiatrist recommended two years of abstinence if the individual completes either of the two rehabilitation programs, or three years of abstinence if he does not. *Id.* At the hearing, the DOE Psychiatrist added under the residual diagnosis of Alcohol Abuse, she would have recommended “the same treatment program, but may require only one year of sobriety, so that he will be in full sustained remission.” Tr. at 258.

The record indicates that the individual completed a five-week IOP for alcohol treatment in late July 2003 to early September 2003, upon referral by his EAP counselor. Tr. at 176-77. Subsequent to completing the IOP, the individual also attended two AA classes in the fall of 2003. Tr. at 179. However, this is the extent of the alcohol treatment the individual has received. The individual declined additional treatment or counseling in March 2004, following the second incident. *See* DOE Exh. 14 at 4. The record indicates that the individual has undergone only brief periods of abstinence, during the IOP, again in late 2003 and following the second incident in March 2004. The individual continues to drink and has no plan to stop drinking, although he intends to consume alcohol in moderation. Tr. at 189-90.

Thus, the individual has not nearly met the DOE Psychiatrist’s recommendation for adequate evidence of rehabilitation and reformation. Consequently, I must find that the individual has not yet overcome the security concerns associated with his use of alcohol, and I cannot recommend restoring the individual a security clearance at this time. *See Personnel Security Hearing*, Case No. VSO-0359, 28 DOE ¶ 82,768 (2000), *aff’d*, *Personnel Security Review*, 28 DOE ¶ 83,016 (2001); *Personnel Security Hearing*,

Case No. TSO-0011, 28 DOE ¶ 82,912 (2003); *cf. Personnel Security Hearing*, Case No. TSO-0001, 28 DOE ¶ 82,911 (2003).

#### B. Criterion L, Unusual Conduct

Under Criterion L, the Notification Letter cites the individual's failing the mandatory .02 BAT administered by his employer in July 2003 and March 2004. As set forth above, I have determined that the individual has failed to mitigate the concerns of DOE Security associated with his use of alcohol. I therefore find, correspondingly, that the individual has not yet overcome the concerns of DOE Security under Criterion L.

### III. Conclusion

I find that DOE Security properly invoked 10 C.F.R. §§ 710.8(h), (j) and (l) in suspending the individual's request for an access authorization. For the reasons set forth in this Decision, I further find that the individual has not adequately mitigated the associated security concerns. I am therefore unable to find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's security clearance should not be restored at this time. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Fred L. Brown  
Hearing Officer  
Office of Hearings and Appeals

Date: October 17, 2005